

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

NEW MEXICO HEALTH)	
CONNECTIONS,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-00878 JB/JHR
)	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

NOTICE

Defendants respectfully file this Notice to inform the Court of additional developments that may bear on the Court’s consideration of Defendants’ Rule 59(e) motion, ECF No. 57, which have occurred since the Defendants’ most recent filing of July 25, 2018, ECF No. 81.

HHS has issued a new Notice of Proposed Rulemaking (“NPRM”) concerning the risk adjustment methodology for the 2018 benefit year. *See* Ex. A, Patient Protection and Affordable Care Act: Adoption of the Methodology for the HHS-operated Permanent Risk Adjustment Program for the 2018 Benefit Year Proposed Rule (CMS-9919-P), *available at* <https://www.federalregister.gov/documents/2018/08/10/2018-17142/patient-protection-and-affordable-care-act-adoption-of-methodology-for-hhs-operated-permanent-risk>. This NPRM proposes to adopt the risk adjustment methodology previously promulgated by the agency for the 2018 benefit year. It also responds to the Court’s prior decision by providing additional explanation of the agency’s use of statewide average premium in the risk adjustment payment

transfer formula, as well as the risk adjustment program's budget neutral design, and seeks comment on these issues. *See* Ex. A at 7–15.

Defendants also notify the Court that the 2017 benefit year rule previously submitted to the Court, Ex. A to ECF No. 81, has now been published in the Federal Register with an effective date of July 30, 2018. *See* 83 Fed. Reg. 36,456 (July 30, 2018).

As stated in their previous notice concerning the new 2017 benefit year rule, Defendants continue to urge the Court to grant their Rule 59(e) motion in full. Issuance of the new 2017 rule and 2018 NPRM clearly does not moot the motion with respect to the 2014-2016 rules. Moreover, the explanations that HHS provided in connection with the new 2017 rule and 2018 NPRM provide additional reasons for the Court to grant the Rule 59(e) motion in its entirety. Thus, we ask the Court to rule on the motion as soon as possible.

Dated: August 8, 2018

Respectfully submitted,

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/s/ James Powers
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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2018, I caused the foregoing document to be served on counsel for plaintiff by filing with the court's electronic case filing system.

/s/ James Powers
James R. Powers